

ESTTA Tracking number: **ESTTA454925**

Filing date: **02/06/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Jacqueline I. Fulop
Granted to Date of previous extension	02/05/2012
Address	40 Crossways Park Drive Suite 105 Woodbury, NY 11797 UNITED STATES
Attorney information	BRIAN A BLOOM CERTILMAN BALIN ADLER & HYMAN LLP 90 MERRICK AVENUE, 9TH FLOOR EAST MEADOW, NY 11554 UNITED STATES bbloom@certilmanbalin.com Phone:516-296-7160

Applicant Information

Application No	85257143	Publication date	08/09/2011
Opposition Filing Date	02/06/2012	Opposition Period Ends	02/05/2012
Applicant	Church Street Health Management, LLC Suite 520 618 Church Street Nashville, TN 37219 UNITED STATES		

Goods/Services Affected by Opposition

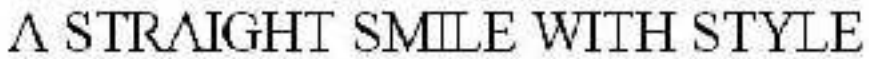
Class 044. First Use: 2009/04/15 First Use In Commerce: 2009/04/15
All goods and services in the class are opposed, namely: Orthodontic services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85460520	Application Date	10/31/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	A STRAIGHT SMILE WITH STYLE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 1996/09/01 First Use In Commerce: 1996/09/01 Orthodontic services

Attachments	85460520#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (17 pages)(2152448 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/Brian A. Bloom/
Name	BRIAN A BLOOM
Date	02/06/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JACQUELINE I. FULOP,	:	Opposition No. _____
	:	
Opposer,	:	Serial No. 85/257,143
	:	
v.	:	Mark: STRAIGHT SMILES
	:	
CHURCH STREET HEALTH	:	Filed: March 3, 2011
MANAGEMENT, LLC,	:	
	:	Published: August 9, 2011
Applicant.	:	
_____	X	

NOTICE OF OPPOSITION

Opposer, Dr. Jacqueline I. Fulop-Goodling (hereinafter “Dr. Jacquie” or “Opposer”) is an individual and an orthodontist, with a place of business located at 30 East 40th Street, Suite 806, New York, New York 10017, believes that she will be damaged by registration of the mark STRAIGHT SMILES shown in Application Serial No. 85/257,143 for the services in International Class 044, filed on March 3, 2011 by Applicant, Church Street Health Management, LLC, a limited liability company, with an address c/o WALLER LANSDEN DORTCH & DAVIS, LLP, 511 Union Street, Suite 2700, Nashville, Tennessee 37219 (hereinafter “CSHM” or “Applicant”), and hereby opposes the same.

As grounds for opposition, Opposer Dr. Jacquie alleges that:

1. Opposer Dr. Jacquie is engaged, among other things, in the business of offering dental and orthodontic services and treatment to the consuming public.
2. Opposer Dr. Jacquie is the owner of the Application Serial No. 85/460,520 for the applied-for mark “A STRAIGHT SMILE WITH STYLE” in International Class 044 for the

Goods & Services: Orthodontic services (the “SSWS Mark”). A copy of the SSWS Mark Application is attached hereto as Exhibit “A”.

3. Opposer Dr. Jacquie filed her U.S. Trademark application for the SSWS Mark on or about October 31, 2011.

4. In her Application Serial No. 85/460,520 for the SSWS Mark, Opposer Dr. Jacquie alleged a first use in U.S. Commerce date of September 1, 1996.

5. Opposer believes that the SSWS Mark will issue upon review by the U.S. Trademark Examiner.

6. Opposer has continuously used the SSWS Mark in interstate commerce, throughout the United States, since at least as early as September 1, 1996 in connection with dental and orthodontic services and orthodontic goods and services, and intends to continue to use the SSWS Mark in the future.

7. On March 3, 2011, Applicant filed an application, Serial No. 85/257,143, with the U.S. Patent and Trademark Office to register the mark STRAIGHT SMILES (the “SS Mark”) in connection with orthodontic services (the “SS Application”). The SS Application asserted a first use in commerce date of April 15, 2009.

8. Applicant’s SS Application Serial No. 85/257,143 was published for opposition on August 9, 2011.

9. Opposer Dr. Jacquie subsequently filed two extensions of time to oppose, dated August 24, 2011 and October 3, 2011, respectively.

10. The Parties engaged and have been engaged in substantive settlement discussions concerning Applicant’s application. In light of the Parties’ discussions, Applicant, through its counsel, filed for an additional extension of time dated December 5, 2011.

11. Opposer Dr. Jacquie, through the use and promotion of the SSWS Mark, from a time far prior to Applicant's filing of the SS Application to register the SS Mark, and by virtue of the quality of Opposer's goods and services, has built up a valuable goodwill and reputation in connection with the SSWS Mark.

12. Opposer's SSWS Mark is a distinctive and strong mark, having inherent distinctiveness or acquired distinctiveness through long-standing use, and serving to distinguish the source of Opposer's goods and services.

13. Applicant's proposed mark STRAIGHT SMILES is highly similar in appearance, sound, connotation, and commercial impression to Opposer's SSWS Mark.

14. Applicant and Opposer Dr. Jacquie's respective goods and services under their respective marks are identical in that they are both related to dental and orthodontic goods and services.

15. Prior to Applicant's filing of its SS Mark, Opposer Dr. Jacquie had already been using the SSWS Mark in commerce for over 16 years in connection with her orthodontic and dental goods and services.

16. Opposer Dr. Jacquie believes that she will be damaged by the registration of Applicant's proposed SS Mark and therefore opposes application Serial No. 85/257,143 because Applicant's proposed STRAIGHT SMILES mark, its registration and use of its proposed mark in connection with the goods and services set forth in application Serial No. 85/257,143 is likely to cause confusion, to cause mistake, and to deceive customers, potential customers and others as to the source of its goods. Such confusion will cause harm to Opposer Dr. Jacquie and the consuming public and jeopardize the valuable goodwill and reputation Opposer Dr. Jacquie has

built up in connection with its SSWS Mark and her successful, high-profile orthodontic and dental practice.

17. Accordingly, for each and every reason stated above, Opposer Dr. Jacquie believes that she will be damaged by the registration of Applicant's STRAIGHT SMILES mark and opposes application Serial No. 85/257,143.

WHEREFORE, Opposer Dr. Jacquie prays that this opposition be sustained and that the registration of Applicant's STRAIGHT SMILES mark in application Serial No. 85/257,143 be refused.

Dated: February 6, 2012

Respectfully submitted,

CERTILMAN BALIN ADLER & HYMAN, LLP

By: 
Brian A. Bloom

Attorneys for Opposer
JACQUELINE I. FULOP

90 Merrick Avenue, 9th Floor
East Meadow, New York 11554
Tel: (516) 296-7160
Fax: (516) 296-7111
Email: bbloom@certilmanbalin.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid and via electronic mail on February 6, 2012 upon counsel for Applicant at the following address:

MARK PLOTKIN, ESQ.
c/o WALLER LANSDEN DORTCH & DAVIS, LLP
511 UNION ST STE 2700
NASHVILLE, TN 37219-1791
mark.plotkin@wallerlaw.com


BREE A. BRUNO

EXHIBIT "A"



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A STRAIGHT SMILE WITH STYLE

Word Mark	A STRAIGHT SMILE WITH STYLE
Goods and Services	IC 044. US 100 101. G & S: Orthodontic services. FIRST USE: 19960901. FIRST USE IN COMMERCE: 19960901
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85460520
Filing Date	October 31, 2011
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Fulop-Goodling, Jacqueline I. INDIVIDUAL UNITED STATES Suite 105 40 Crossways Park Drive Woodbury NEW YORK 11797
Attorney of Record	Brian A. Bloom
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Trademark/Service Mark Application, Principal Register

Serial Number: 85460520

Filing Date: 10/31/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85460520
MARK INFORMATION	
* MARK	<u>A STRAIGHT SMILE WITH STYLE</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	A STRAIGHT SMILE WITH STYLE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
* OWNER OF MARK	Fulop-Goodling, Jacqueline I.
INTERNAL ADDRESS	Suite 105
* STREET	40 Crossways Park Drive
* CITY	Woodbury
* STATE (Required for U.S. applicants)	New York
* COUNTRY	United States
* ZIP/POSTAL CODE (Required for U.S. applicants only)	11797

LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	044
IDENTIFICATION	Orthodontic services.
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/1996
FIRST USE IN COMMERCE DATE	At least as early as 09/01/1996
SPECIMEN FILE NAME(S)	
JPG FILE(S)	<u>\\TICRS\EXPORT11\IMAGEOUT 11\854\605\85460520\xml1\APP0003.JPG</u>
ORIGINAL PDF FILE	<u>spec-6974193130-152657085 . ASSWS Business Card actual use specimen.pdf</u>
CONVERTED PDF FILE(S) (1 page)	<u>\\TICRS\EXPORT11\IMAGEOUT11\854\605\85460520\xml1\APP0004.JPG</u>
SPECIMEN DESCRIPTION	Advertisement showing actual in U.S. Commerce use of the mark "A Straight Smile With Style" in connection with applicant's orthodontic practice; Business card showing in U.S. Commerce actual use of the mark use as a domain name www.astraightsmilewithstyle.com.
ATTORNEY INFORMATION	
NAME	Brian A. Bloom
ATTORNEY DOCKET NUMBER	11613.0952
FIRM NAME	CERTILMAN BALIN ADLER & HYMAN, LLP
INTERNAL ADDRESS	9th Floor
STREET	90 Merrick Avenue
CITY	East Meadow
STATE	New York

COUNTRY	United States
ZIP/POSTAL CODE	11554
PHONE	516-296-7160
FAX	516-296-7111
EMAIL ADDRESS	bbloom@certilmanbalin.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
NAME	Brian A. Bloom
FIRM NAME	CERTILMAN BALIN ADLER & HYMAN, LLP
INTERNAL ADDRESS	9th Floor
STREET	90 Merrick Avenue
CITY	East Meadow
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	11554
PHONE	516-296-7160
FAX	516-296-7111
EMAIL ADDRESS	bbloom@certilmanbalin.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Brian A. Bloom/

SIGNATORY'S NAME	Brian A. Bloom
SIGNATORY'S POSITION	Attorney of record, New York bar member
DATE SIGNED	10/31/2011

Trademark/Service Mark Application, Principal Register

Serial Number: 85460520

Filing Date: 10/31/2011

To the Commissioner for Trademarks:

MARK: A STRAIGHT SMILE WITH STYLE (Standard Characters, see mark)

The literal element of the mark consists of A STRAIGHT SMILE WITH STYLE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Jacqueline I. Fulop-Goodling, a citizen of United States, having an address of
Suite 105,
40 Crossways Park Drive
Woodbury, New York 11797
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 044: Orthodontic services.

In International Class 044, the mark was first used at least as early as 09/01/1996, and first used in commerce at least as early as 09/01/1996, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Advertisement showing actual in U.S. Commerce use of the mark "A Straight Smile With Style" in connection with applicant's orthodontic practice; Business card showing in U.S. Commerce actual use of the mark use as a domain name www.astraightsmilewithstyle.com.

JPG file(s):

Specimen File1

Original PDF file:

spec-6974193130-152657085 . ASSWS Business Card actual use specimen.pdf

Converted PDF file(s) (1 page)

Specimen File1

The applicant's current Attorney Information:

Brian A. Bloom of CERTILMAN BALIN ADLER & HYMAN, LLP

9th Floor
90 Merrick Avenue
East Meadow, New York 11554
United States

The attorney docket/reference number is 11613.0952.

The applicant's current Correspondence Information:

Brian A. Bloom
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East Meadow, New York 11554
516-296-7160(phone)
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bbloom@certilmanbalin.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Brian A. Bloom/ Date Signed: 10/31/2011
Signatory's Name: Brian A. Bloom
Signatory's Position: Attorney of record, New York bar member

RAM Sale Number: 2119
RAM Accounting Date: 11/01/2011

Serial Number: 85460520
Internet Transmission Date: Mon Oct 31 15:35:44 EDT 2011
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